

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICK MADSEN.

No. C 09-05457 SBA (PR)

Plaintiff,

V.

SUE E. RISENHOOVER, et al.

## Defendants

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS; SERVING  
COGNIZABLE CLAIMS FROM HIS  
COMPLAINT; REFERRING CASE TO  
PRO SE PRISONER SETTLEMENT  
PROGRAM; AND ADDRESSING HIS  
PENDING MOTIONS**

(Docket nos. 5, 15, 19)

## INTRODUCTION

Plaintiff, a state prisoner currently incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. He alleges that PBSP officials were deliberately indifferent to his serious medical needs from 2002 to 2009.

On December 21, 2009, the Court dismissed Plaintiff's action because he failed to meet a December 17, 2009 deadline to either pay the filing fee or complete an in forma pauperis (IFP) application.

Thereafter, Plaintiff filed a motion for reconsideration. He argued that he mailed a complete IFP application on December 8, 2009; however, the IFP application was not entered into the Court's electronic database until December 28, 2009.

On January 27, 2010, the Court reopened the case because the record indicated that Plaintiff's IFP application was in fact filed before the deadline.

The Court now reviews Plaintiff's complaint and his pending motion for leave to proceed IFP. Plaintiff has also filed two motions for a preliminary injunction, in one of which he also requests appointment of counsel; therefore, the Court also addresses these motions below.

Venue is proper because the events giving rise to the claim are alleged to have occurred at PBSP, which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: PBSP Physicians Sue E. Risenhoover, Claire P. Williams and W. Wahidullah; PBSP Chief Medical Officer Michael Sayre; PBSP Registered Nurse Donna K. Alpaugh; PBSP Family Nurse Practitioner M. McLean;

"unnamed UM review committee members" from June 5, 2006, July 25, 2006, August 16, 2006, November 9, 2006, November 20, 2006 and May 20, 2008; "unnamed MAR review committee members" from August 21, 2006, November 20, 2006 and May 20, 2008; and "unnamed Does 1-50."<sup>1</sup> (Compl. at 2-5.) Plaintiff seeks monetary damages and injunctive relief.

## DISCUSSION

### **I. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### **II. Legal Claims**

#### **A. Deliberate Indifference Claim**

Plaintiff claims Defendants were deliberately indifferent to his serious medical needs. Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); *Jones v. Johnson*, 781 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate indifference" involves an examination of two elements: the seriousness of the prisoner's medical need and the nature of the defendant's response to that need. *See McGuckin*, 974 F.2d at 1059. A "serious" medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the "unnecessary and wanton

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<sup>1</sup> Plaintiff does not explain the meaning of "UM" or "MAR."

1 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at 104). A prison official is deliberately  
2 indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and disregards  
3 that risk by failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837  
4 (1994).

5 Here, Plaintiff states that he suffers from "a potentially fatal disease known as Hepatitis C,  
6 [and] its symptoms of night sweats, fevers/chills, nausea, poor appetite, weight loss, fatigue, the  
7 inability to keep certain foods down, prolong[ed] stomach pains, gallbladder problems, and a[n]  
8 undiagnosed abdominal pain." (Compl. at 6.) Plaintiff's allegations support an inference that he has  
9 serious medical needs.

10 Plaintiff raises allegations of deliberate indifference to his serious medical needs against six  
11 officials within the PBSP health care system. The Court has summarized Plaintiff's allegations  
12 against these Defendants, as follows:

- 13 (1) Plaintiff alleges that his primary care provider, Defendant Risenhoover:
  - 14 (a) failed to notify Plaintiff that he had tested positive for Hepatitis C until a year  
after the test (id. at 9);
  - 15 (b) failed to respond to lab results confirming Plaintiff's Hepatitis C diagnosis for  
months (id. at 10);
  - 16 (c) "disregard[ed] medical data that would have demanded a liver biopsy and  
anti-viral treatment" (id.);
  - 17 (d) "misrepresent[ed] facts and contradict[ed] her own examinations" (id.);
  - 18 (e) denied "Plaintiff's requests for a liver biopsy and anti-viral treatment" (id. at  
16);
  - 19 (f) "delay[ed] any treatment for years, while Plaintiff's condition and illness  
became progressively worse" (id. at 11);
  - 20 (g) "continued to suggest that Plaintiff's enzyme levels and viral load count were  
not of significant concern" (id.);
  - 21 (h) "referred Plaintiff for a HIDA scan<sup>2</sup> instead of the previous recommendation  
CT scan" (id. at 13);
  - 22 (i) prescribed acetaminophen for pain "in spite of Plaintiff's many complaints  
that this medication aggravated his esophagus [and] stomach, leaving Plaintiff  
with nothing to combat his pain and vomiting" (id. at 14);

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28 <sup>2</sup> A Hepatobiliary Imino-Diacetic Acid (HIDA) scan is a nuclear imaging procedure to evaluate  
the health and function of the gallbladder.

- 1 (j) gave Plaintiff a shot of hydrocortisone, causing him to vomit and have bloody  
2 stools (id.);  
3 (k) prescribed ibuprofen and Tylenol, "leaving Plaintiff without anything to  
4 combat his pain and vomiting" (id. at 15-16);  
5 (l) denied Plaintiff's requests for a special diet, (id. at 15);  
6 (m) refused to examine Plaintiff when he became violently ill on June 3, 2008 (id.  
7 at 22); and  
8 (n) participated during the review of Plaintiff's 602 inmate appeals "in an attempt  
9 to undermine Plaintiff's contentions of substandard medical care and her  
failure to treat" (id. at 16).  
10 (2) Plaintiff alleges that, as part of a committee reviewing Plaintiff's 602 inmate appeals,  
11 Defendant Sayre:  
12 (a) prescribed acetaminophen for pain despite its adverse side effects on Plaintiff  
13 (id. at 14);  
14 (b) "denie[d] Plaintiff's concerns regarding his medical care treatment" (id. at  
15);  
16 (c) denied Plaintiff's request for a special diet to alleviate his stomach problems  
17 (id. at 17); and  
18 (d) denied Plaintiff's request for a liver biopsy and anti-viral treatment "for  
19 unknown reasons" (id. at 19).  
20 (3) Plaintiff alleges that, as part of a committee reviewing Plaintiff's 602 inmate appeals,  
21 Defendant Williams denied Plaintiff's request for a special diet to alleviate his  
22 stomach problems. (Id. at 17, 22.)  
23 (4) Plaintiff alleges that, as part of a committee reviewing Plaintiff's 602 inmate appeals,  
24 Defendant Alpaugh denied Plaintiff's request for a liver biopsy and anti-viral  
25 treatment "for unknown reasons." (Id. at 19.)  
26 (5) Plaintiff alleges that, as part of a committee reviewing Plaintiff's 602 inmate appeals,  
27 Defendant Wahidullah denied Plaintiff's request for a liver biopsy and anti-viral  
28 treatment. (Id. at 16.)  
29 (6) Plaintiff alleges that Defendant McLean, in investigating Plaintiff's medical  
30 complaints, "failed to provide a medical reason for denying Plaintiff's request for  
31 anti-viral treatment." (Id. at 17.)

32 Liberally construed, Plaintiff's above allegations of inadequate medical treatment for his  
33 Hepatitis C state a cognizable deliberate indifference claim against Defendants Risenhoover, Sayre,  
34 Williams, Alpaugh, Wahidullah and McLean.

35 **B. Supervisory Liability Claims**

36 Plaintiff also claims that Defendants Sayre and McLean are liable as supervisors. Plaintiff

1 must allege that each defendant, as a supervisor, "participated in or directed the violations, or knew  
2 of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.  
3 1989). Plaintiff claims that Defendants Sayre's and McLean's roles in the prison grievance system  
4 made them aware of Plaintiff's condition and that "allowing the continuation of the alleged unlawful  
5 conduct" creates supervisory liability. (Compl. at 29.) Accordingly, Plaintiff has stated cognizable  
6 supervisory liability claims against Defendants Sayre and McLean.

7 **III. Claims Against Doe Defendants**

8 Plaintiff names Doe Defendants for which he "will seek leave to amend this complaint to add  
9 their true names when the names have been ascertained." (Compl. at 5.) Specifically, Plaintiff  
10 identifies "unnamed UM review committee members" from June 5, 2006, July 25, 2006, August 16,  
11 2006, November 9, 2006, November 20, 2006 and May 20, 2008; "unnamed MAR review  
12 committee members" from August 21, 2006, November 20, 2006 and May 20, 2008; and "unnamed  
13 Does 1-50." (Compl. at 3-5.) The use of Doe Defendants is not favored in the Ninth Circuit. See  
14 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, where the identity of alleged  
15 defendants cannot be known prior to the filing of a complaint the plaintiff should be given an  
16 opportunity through discovery to identify them. Id. Failure to afford the plaintiff such an  
17 opportunity is error. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999).  
18 Accordingly, the claims against all Doe Defendants are DISMISSED without prejudice. Should  
19 Plaintiff learn Doe Defendants' identities through discovery, he may move to file an amended  
20 complaint to add them as named defendants. See Brass v. County of Los Angeles, 328 F.3d 1192,  
21 1195-98 (9th Cir. 2003).

22 **IV. Pro Se Prisoner Settlement Program**

23 The Northern District of California has established a Pro Se Prisoner Settlement Program.  
24 Certain prisoner civil rights cases may be referred to a neutral magistrate judge for settlement  
25 proceedings. The proceedings will consist of one or more conferences as determined by Magistrate  
26 Judge Nandor Vadas.

27 Good cause appearing, the present case will be REFERRED to Magistrate Judge Vadas for  
28 settlement proceedings pursuant to the Pro Se Prisoner Settlement Program. The proceedings shall

1 take place within **ninety (90) days** after the date of this Order; or as soon thereafter as is convenient  
2 to the magistrate judge's calendar. Magistrate Judge Vadas shall coordinate a time and date for a  
3 settlement proceeding with all interested parties and/or their representatives and, within **ten (10)**  
4 **days** after the conclusion of the settlement proceedings, file with the Court a report regarding the  
5 settlement proceedings.

6 **V. Plaintiff's Pending Motions**

7 **A. Motions for Preliminary Injunction**

8 Plaintiff seeks immediate injunctive relief (docket nos. 15, 19). Prior to granting a  
9 preliminary injunction, however, notice to the adverse party is required. See Fed. R. Civ. P.  
10 65(a)(1). Therefore, a motion for preliminary injunction cannot be decided until the parties to the  
11 action are served. See *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

12 The decision of whether to grant or deny a motion for preliminary injunction is a matter of  
13 the district court's discretion. *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046,  
14 1052 (9th Cir. 2009). The standard for assessing a motion for preliminary injunction is set forth in  
15 *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008). "Under *Winter*, plaintiffs  
16 seeking a preliminary injunction must establish that (1) they are likely to succeed on the merits;  
17 (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of  
18 equities tips in their favor; and (4) a preliminary injunction is in the public interest." *Sierra Forest*  
19 *Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009).

20 Immediate injunctive relief, such as a temporary restraining order, may be granted without  
21 written or oral notice to the adverse party or that party's attorney only if: (1) it clearly appears from  
22 specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury,  
23 loss or damage will result to the applicant before the adverse party or the party's attorney can be  
24 heard in opposition, and (2) the applicant's attorney certifies in writing the efforts, if any, which  
25 have been made to give notice and the reasons supporting the claim that notice should not be  
26 required. See Fed. R. Civ. P. 65(b).

27 Plaintiff swears under penalty of perjury that the information contained in his operative  
28 complaint as well as his motions for a preliminary injunction are true and correct, and thus these

1 pleadings may be deemed an affidavit. Although the pleadings describe Plaintiff's circumstances  
2 with a fair amount of specificity, as noted below, it does not clearly appear from the pleadings that  
3 Plaintiff will suffer immediate injury before Defendants can be given an opportunity to respond.

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5 On May 10, 2010, Plaintiff filed a "Motion, Notice, to the Court, and Defendants, Their  
6 Counsel. Re: Discontinuation of Care, Medications, and Special Soft Diet. In Retaliation. Request  
7 for Hearing on Date: 6-10-2010" (docket no. 15). In his motion, Plaintiff requests the "special soft  
8 diet" he once had, but which was discontinued on April 6, 2010. (Pl.'s May 10, 2010 Mot. at 3.) He  
9 further seeks the reinstatement of his "sulfame thoxazole/TMP O Stab used to fight/control bacteria  
10 [and] fluid build up in stomach." (Id. at 4.) He requests refills on "propanol, use[d] as a BETA  
11 blocker for my massively enlarged spleen and failing liver." (Id.) Finally, he seeks the  
12 reinstatement of "daily vitals checks, used to stay on top of my blood pressure," and "chronic care  
13 visits ever[y] 30-90 days." (Id.) In sum, Plaintiff seeks immediate injunctive relief to "halt the  
14 discontinuations" of treatment. (Id. at 7.)

15 On February 14, 2011, Plaintiff filed a motion entitled "Emergency" (docket no. 19). He  
16 requests a "preliminary injunction, for treatment." (Pl.'s Feb. 14, 2011 Mot. at 3-4.) Plaintiff asks  
17 the Court to order Defendants to provide "anti-viral treatment for Hepatitis C with the newest drug  
18 on the market." (Id.) In addition, Plaintiff seeks the "appointment of an outside physician" to  
19 manage his health care. (Id.)

20 The Court concludes that Plaintiff's requests for temporary injunctive relief should not be  
21 granted without affording Defendants notice and an opportunity to be heard. In light of these  
22 circumstances, the Court will not rule on Plaintiff's motions for a preliminary injunction at this time  
23 as he has neither complied with the notice requirement for issuance of a preliminary injunction, see  
24 Fed. R. Civ. P. 65(a)(1), nor has he certified any efforts made to give notice and the reasons why it  
25 should not be required, Fed. R. Civ. P. 65(b)(1)(B). Accordingly, the motions for a preliminary  
26 injunction (docket nos. 15, 19) are DENIED as premature without prejudice to Plaintiff filing a  
27 properly noticed request for a preliminary injunction and consolidating his two motions into one  
28

1 renewed motion. Once Plaintiff files his renewed motion, Defendants are ORDERED to respond to  
2 his motion, as directed below.

3 **B. Motion for Appointment of Counsel**

4 In Plaintiff's May 10, 2010 motion, he also seeks appointment of counsel. (Pl.'s May 10,  
5 2010 Mot. at 7-8.) There is no constitutional right to counsel in a civil case unless an indigent  
6 litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Social  
7 Services, 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no  
8 constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en  
9 banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent  
10 litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which  
11 requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the  
12 plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See id.  
13 at 1525; Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d  
14 1328, 1331 (9th Cir. 1986). Both of these factors must be viewed together before reaching a  
15 decision on a request for counsel under § 1915. See id.

16 At this time, the Court is unable to assess whether exceptional circumstances exist which  
17 would warrant seeking volunteer counsel to accept a pro bono appointment. It is premature for the  
18 Court to determine Plaintiff's likelihood of success on the merits. Moreover, Plaintiff has been able  
19 to articulate his claims adequately pro se in light of the complexity of the issues involved. See  
20 Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir. 2004). Accordingly, his  
21 request for appointment of counsel (docket no. 15) at this time is DENIED. This does not mean,  
22 however, that the Court will not consider appointment of counsel at a later juncture in the  
23 proceedings, that is, after the Defendants have filed their dispositive motion and the Court has a  
24 better understanding of the procedural and substantive matters at issue. Therefore, Plaintiff may file  
25 a renewed motion for the appointment of counsel after the Defendants' dispositive motion has been  
26 filed. If the Court decides that appointment of counsel is warranted at that time, then it can seek  
27 volunteer counsel to agree to represent Plaintiff pro bono.

28 **CONCLUSION**

1 For the foregoing reasons, the Court orders as follows:

2 1. Plaintiff's motion for leave to proceed IFP (docket no. 5) is GRANTED. The total  
3 filing fee due is \$350.00. The initial partial filing fee due for Plaintiff at this time is \$7.26. A copy  
4 of this Order and the attached instruction sheet will be sent to Plaintiff, the Prison Trust Account  
5 Office and the Court's Financial Office.

6 2. Plaintiff's allegations of inadequate medical treatment for his Hepatitis C state a  
7 cognizable deliberate indifference claim against Defendants Risenhoover, Sayre, Williams,  
8 Alpaugh, Wahidullah and McLean.

9 3. Plaintiff has stated cognizable supervisory liability claims against Defendants Sayre  
10 and McLean.

11 4. Plaintiff's claims against the Doe Defendants are DISMISSED from this action  
12 without prejudice.

13 5. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
14 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and  
15 all attachments thereto (docket no. 1), and a copy of this Order to: **PBSP Physicians Sue E.**  
16 **Risenhoover, Claire P. Williams and W. Wahidullah; PBSP Chief Medical Officer Michael**  
17 **Sayre; PBSP Registered Nurse Donna K. Alpaugh; and PBSP Family Nurse Practitioner M.**  
18 **McLean at PBSP.** The Clerk shall also mail a copy of the complaint and a copy of this Order to the  
19 State Attorney General's Office in San Francisco. Additionally, the Clerk shall mail a copy of this  
20 Order to Plaintiff.

21 6. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires  
22 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant  
23 to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of  
24 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of  
25 such service unless good cause be shown for their failure to sign and return the waiver form. If  
26 service is waived, this action will proceed as if Defendants had been served on the date that the  
27 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve  
28 and file an answer before **sixty (60) days** from the date on which the request for waiver was sent.

1 (This allows a longer time to respond than would be required if formal service of summons is  
2 necessary.) Defendants are asked to read the statement set forth at the foot of the waiver form that  
3 more completely describes the duties of the parties with regard to waiver of service of the summons.  
4 If service is waived after the date provided in the Notice but before Defendants have been  
5 personally served, the answer shall be due **sixty (60) days** from the date on which the request for  
6 waiver was sent or **twenty (20) days** from the date the waiver form is filed, whichever is later.

7       7. Defendants shall answer the complaint in accordance with the Federal Rules of Civil  
8 Procedure. The following briefing schedule shall govern dispositive motions in this action:

9           a.       No later than **ninety (90) days** from the date their answer is due, Defendants  
10 shall file a motion for summary judgment or other dispositive motion. The motion shall be  
11 supported by adequate factual documentation and shall conform in all respects to Federal Rule of  
12 Civil Procedure 56. If Defendants are of the opinion that this case cannot be resolved by summary  
13 judgment, they shall so inform the Court prior to the date the summary judgment motion is due. All  
14 papers filed with the Court shall be promptly served on Plaintiff.

15           b.       Plaintiff's opposition to the dispositive motion shall be filed with the Court  
16 and served on Defendants no later than **sixty (60) days** after the date on which Defendants' motion  
17 is filed. The Ninth Circuit has held that the following notice should be given to pro se plaintiffs  
18 facing a summary judgment motion:

19               The defendants have made a motion for summary judgment by which they  
20 seek to have your case dismissed. A motion for summary judgment under Rule 56 of  
the Federal Rules of Civil Procedure will, if granted, end your case.

21               Rule 56 tells you what you must do in order to oppose a motion for summary  
22 judgment. Generally, summary judgment must be granted when there is no genuine  
23 issue of material fact -- that is, if there is no real dispute about any fact that would  
affect the result of your case, the party who asked for summary judgment is entitled  
24 to judgment as a matter of law, which will end your case. When a party you are  
suing makes a motion for summary judgment that is properly supported by  
25 declarations (or other sworn testimony), you cannot simply rely on what your  
complaint says. Instead, you must set out specific facts in declarations, depositions,  
26 answers to interrogatories, or authenticated documents, as provided in Rule 56(e),  
that contradict the facts shown in the defendant's declarations and documents and  
show that there is a genuine issue of material fact for trial. If you do not submit your  
27 own evidence in opposition, summary judgment, if appropriate, may be entered  
against you. If summary judgment is granted [in favor of the defendants], your case  
28 will be dismissed and there will be no trial.

1      See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

2      Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex  
3      Corp. v. Catrett, 477 U.S. 317 (1986) (party opposing summary judgment must come forward with  
4      evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is  
5      cautioned that because he bears the burden of proving his allegations in this case, he must be  
6      prepared to produce evidence in support of those allegations when he files his opposition to  
7      Defendants' dispositive motion. Such evidence may include sworn declarations from himself and  
8      other witnesses to the incident, and copies of documents authenticated by sworn declaration.  
9      Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of his  
10     complaint.

11         c.      If Defendants wish to file a reply brief, they shall do so no later than **thirty**  
12     **(30) days** after the date Plaintiff's opposition is filed.

13         d.      The motion shall be deemed submitted as of the date the reply brief is due.  
14     No hearing will be held on the motion unless the Court so orders at a later date.

15         8.      Discovery may be taken in this action in accordance with the Federal Rules of Civil  
16     Procedure. Leave of the Court pursuant to Rule 30(a)(2) is hereby granted to Defendants to depose  
17     Plaintiff and any other necessary witnesses confined in prison.

18         9.      All communications by Plaintiff with the Court must be served on Defendants, or  
19     Defendants' counsel once counsel has been designated, by mailing a true copy of the document to  
20     Defendants or Defendants' counsel.

21         10.     It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
22     informed of any change of address and must comply with the Court's orders in a timely fashion

23         11.     Extensions of time are not favored, though reasonable extensions will be granted.  
24     Any motion for an extension of time must be filed no later than **fifteen (15) days** prior to the  
25     deadline sought to be extended.

26         12.     Plaintiff's action is referred to the Pro Se Prisoner Settlement Program, as indicated  
27     above. **The Clerk shall provide a copy of the court documents that are not available**  
28     **electronically, including a copy of this Order, to Magistrate Judge Vadas in Eureka,**

**1 California.**

2       13. Plaintiff's motions for a preliminary injunction (docket nos. 15, 19) are DENIED  
3 without prejudice to filing a properly noticed request for a preliminary injunction and consolidating  
4 his two motions into one renewed motion. In order to expedite the resolution of this case, the Court  
5 orders as follows:

6           a. Plaintiff may file a renewed motion for a preliminary injunction no later than  
7 **thirty (30) days** from the date of this Order.

8           b. Defendants shall respond to Plaintiff's renewed motion no later than **thirty**  
9 **(30) days** from the date that motion is filed. The response to the request for a preliminary injunction  
10 shall be supported by adequate factual documentation and shall conform in all respects to the  
11 Federal Rules of Civil Procedure, and all papers filed with the Court shall be promptly served on  
12 Plaintiff. Even if Plaintiff chooses not to file a renewed motion for a preliminary injunction,  
13 Defendants are still directed -- on the same date their answer is due -- to inform the Court of any  
14 plans to act on the alleged "discontinuation" of Plaintiff's treatment, which was raised in his  
15 previously-filed motions for a preliminary injunction (docket nos. 15, 19).

16           c. Plaintiff may file a reply within **thirty (30) days** of the date Defendants'  
17 response is filed. Plaintiff's reply should be supported by factual documentation and should  
18 demonstrate why Plaintiff satisfies the standard for assessing a request for a preliminary injunction,  
19 which is set forth in Winter, and has been outlined above.

20       14. Plaintiff's request for appointment of counsel (docket no. 15) is DENIED.

21       15. This Order terminates Docket nos. 5, 15 and 19.

22       IT IS SO ORDERED.

23 DATED: March 31, 2011

*Saundra B. Armstrong*  
24 SAUNDRA BROWN ARMSTRONG  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

## INSTRUCTIONS FOR PAYMENT OF PRISONER'S FILING FEE

The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action in forma pauperis in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 1915, the fee is to be paid as follows:

The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner's trust account and forwarded to the clerk of the court as the first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the average monthly deposits to the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition.

Thereafter, on a monthly basis, 20 percent of the preceding month's income credited to the prisoner's trust account should be deducted and forwarded to the court each time the amount in the account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this until the filing fee has been paid in full.

If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance forward each month until the amount is fully paid.

If the prisoner has filed more than one complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting in forma pauperis and these instructions.

**The prisoner's name and case number must be noted on each remittance.** The initial partial filing fee is due within thirty days of the date of the attached order. Checks should be made payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

cc: Plaintiff/Petitioner  
Finance Office

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 RICK MADSEN,  
5 Plaintiff,  
6 v.  
7 SUE E. RISENHOOVER et al,  
8 Defendant.

Case Number: CV09-05457 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on April 13, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Rick Madsen E10400  
16 Pelican Bay State Prison  
17 5905 Lake Earl Drive  
18 Crescent City, CA 95531

19 PRISON TRUST ACCOUNT OFFICE  
20 Pelican Bay State Prison  
21 5905 Lake Earl Drive  
22 Crescent City, CA 95531

23 Dated: April 13, 2011

24 Richard W. Wieking, Clerk  
25 By: LISA R CLARK, Deputy Clerk

26  
27  
28